



600 14th Street NW Suite 750 Washington, D.C. 20005
W > www.covad.com

ORIGINAL

EX PARTE OR LATE FILED

T > 202.220.0400
F > 202.220.0401

Jason Oxman
Senior Counsel

RECEIVED

AUG - 3 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

3 August 2001

Michelle Carey
Chief
Policy Division, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Alexander Starr
Chief
MDRD, Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Application of Verizon-Pennsylvania pursuant to section 271 of the 1996 Act, CC
Docket No. 01-138

Dear Ms. Carey and Mr. Starr:

Covad Communications Company (Covad), by its attorney, respectfully submits this letter requesting the immediate assistance of the Enforcement and Common Carrier Bureaus in resolving a pending dispute between Covad and Verizon regarding the latter's collocation practices. Because this matter involves collocation space in Pennsylvania, it casts serious doubt on Verizon's claim that it is in full compliance with the Commission's collocation rules in that state.

In the last four years, Covad has requested collocation space in hundreds of central offices throughout the Verizon footprint. In many of those offices, Verizon claimed that no space was available for physical collocation, and offered only virtual collocation. Covad was thus faced with a pure Hobson's choice: either forgo the opportunity to enter a market entirely, or purchase virtual collocation in such "no space" central offices. Virtual collocation, which affords Covad no access to its own equipment, denies Covad the ability to serve its customers in as high quality a manner as physical collocation would permit.

Magically, after the Commission adopted rules requiring Verizon to provide physical collocation in a nondiscriminatory manner, collocation space "became"

No. of Copies rec'd 011
LISTA B C D E

available in the central offices in which Verizon had previously claimed no space was available. Unfortunately, Verizon's discovery that space was in fact available did not mean that Covad was immediately able to access physical collocation space. The simplest and least discriminatory means of permitting Covad to access this newly discovered physical collocation space would have been to permit Covad to convert the existing, in-service virtual collocation arrangement to a physical arrangement. But Verizon, citing security and technical concerns, would not permit such conversion. Rather, Verizon forced Covad to apply for new physical collocation space in each of the offices in which Covad was already collocated, and to undergo the additional time, expense, and capital investment of building new collocation space in central offices in which Covad was already collocated. Covad previously raised the issue of this discriminatory practice before the Commission in the dockets of prior Verizon long distance applications.

The physical collocation arrangements in 15 central offices (12 in Pennsylvania and 3 in Maryland) that Covad was forced to order have been completed. Covad has over *two thousand orders* in service in those central offices, and whereas new orders are provisioned to the new physical collocation space, in-service orders remain wired to the virtual collocation arrangement. Thus, Covad has two active collocation arrangements in each of those central offices, and is paying for both. Why? Because Verizon refuses to simply migrate the existing Covad customers from the virtual collocation arrangement to the physical collocation arrangement. Instead, Verizon has made the following demands:

- (1) Covad must submit disconnect orders for the lines served through the virtual arrangements, and then submit new orders corresponding to each of those lines for the new physical arrangement. Of course, Covad is charged a fee for the disconnect, a fee for the reconnect, and a fee for the new loops. It is as if Covad is being forced to undergo the up-front expense of installing new loops for a second time. With over two thousand orders in service in just these 15 central offices, the costs are extraordinary. These excess charges are particularly egregious, given that Covad only applied for virtual collocation in these offices because Verizon claimed that no space was available for physical collocation when space was in fact available.¹
- (2) For Verizon to migrate these loops, Covad must agree to permit Verizon to exclude these orders from the relevant loop provisioning performance metrics in Pennsylvania and Maryland. To accomplish this demand, Verizon has refused to process Covad's loop migration requests until Covad signs a waiver (a copy of which was provided to Covad by Verizon, and is attached to this letter). In other words, Verizon does not want the metrics to capture

¹ Not only will this result in excess charges, it also puts Covad at risk of not obtaining facilities suitable for the services being provided today. Verizon may not have more facilities to these serving addresses, or may only have fiber based facilities that Verizon does not currently provision for ADSL. That leaves as the only alternative issuing a disconnect order, waiting for completion of the disconnect, which then places the facility back in Verizon's inventory as spare, and then issuing a new connect order to the exact same address. Throughout this process there is the risk that Verizon may assign the original facility to some other order, leaving Covad's customer with no service.

the amount of time it takes for Verizon to disconnect all of the in-service Covad loops and provision new loops to Covad's physical collocation space. Why? Because this is such a convoluted process that even Verizon recognizes that the metrics will reflect the inordinate amount of time it will take to complete. Because Verizon has an application pending for long distance authority in Pennsylvania, Verizon's motivation is clear. Even more incredible, Verizon refuses to commit to any timeframe for completing the work – ensuring that it will suffer no pressure whatsoever to complete the work in a timely manner. In essence, Verizon is holding Covad hostage by refusing to provision Covad's loop orders until Covad agrees to protect Verizon's pending Pennsylvania long distance application from regulatory scrutiny. This is the height of anticompetitive behavior – it is sheer blackmail.

In addition to refusing to process these migrations as requested by Covad, Verizon has already disconnected service to at least two Covad end users in Pennsylvania. Although Verizon will likely claim that the disconnects were accidental, that does not change the fact that they happened. Nor does it change the fact that Verizon's discriminatory collocation policies are not only designed to cause delay and unnecessary cost to Covad, they appear to be designed to ensure service disruption such as already has occurred.

In resolving this issue, the Commission must answer only one question: Is the process that Verizon is forcing Covad to follow a "just, reasonable and nondiscriminatory" rate, term, and condition, pursuant to section 251(c)(6) of the Act. The answer clearly is no. Verizon has put in place a migration process that artificially and without any commercially reasonable justification inflates Covad's costs, delays Covad's access to physical collocation space, and denies Covad the ability to inform regulators through the performance metric process the extent to which Covad is harmed.

In March 2001, Covad requested permission to pursue an accelerated rocket docket claim against Verizon based on the findings of the Bell Atlantic/GTE merger audit that Verizon discriminated in favor of its own affiliate by providing favorable collocation terms and conditions. That request was denied. Covad now again requests the Enforcement Bureau's assistance in ending a discriminatory collocation practice. Specifically, Covad asks the Commission to ensure that Covad is able to migrate all existing in-service loops as described above from virtual collocation arrangements to physical collocation arrangements, without charge, and pursuant to the existing loop provisioning intervals in the relevant state.

On August 2, 2001, Rhythms NetConnections, Inc., one of only two remaining national DSL providers (Covad is the other), filed for Chapter 11 bankruptcy protection and noted the possibility that it would shut down its network 30 days after August 10, 2001. It is time for the Commission to stop assuming that competitors will be able to address discriminatory incumbent behavior on their own, without regulatory assistance. Covad awaits the Commission's response to this request for assistance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jason D. Oxman', with a stylized, cursive script.

Jason D. Oxman

cc: Kyle Dixon, OCH
Jordan Goldstein, OCC
Sam Feder, OCM
Matthew Brill, OCA
Deena Shetler, OCT
David Solomon
Suzanne Tetreault
Frank Lamancusa
Dorothy Attwood
Glenn Reynolds
Kathy Farroba
Brent Olson
Christopher Libertelli
Clint Odom, Verizon

Please accept this letter as authorization to exclude certain (CLEC Name) Local Service Requests from reported performance metrics. The LSRs to be excluded will carry a unique PON prefix of (____). To the extent that the special handling (Describe exactly what the special handling will entail) of these project orders will cause Verizon to miss performance standards in either ordering or provisioning metrics, (CLEC Name) agrees that these requests will be excluded from the performance metrics reported. All LSRs issued as part of this project estimated to begin (Date) would continue to be exempt from the measurement until such time as (CLEC Name) gives notification of project completion.

Partial list of central offices with forced virtual to physical collocation conversion

DMSCMDDE

Damascus

Baltimore,MD

GLWDMGDG

Glenwood

Baltimore,MD

PARLMDPA

Parole

Baltimore,MD

STMRMDSM

Saint Margarets

Baltimore,MD

ARTNVACY

Crystal City

Washington,DC

BRYMPABM

Bryn Mawr

Philadelphia,PA

CGVLPACL

Collegeville

Philadelphia,PA

CNSHPACN

Conshohocken

Philadelphia,PA

DYTWPADB

Doylestown

Philadelphia,PA

EXTNPAEX

Exton

Philadelphia,PA

KGPRPAKP

King of Prussia

Philadelphia,PA

LANGPALA

Langhorne

Philadelphia,PA

LNDLPALD

Lansdale

Philadelphia,PA

WAYNPAWY

Wayne

Philadelphia,PA

Yardley

Philadelphia,PA

LNSDPALD

Landsdowne

Philadelphia,PA